

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

OCEAN RIDGE CAPITAL ADVISORS,  
LLC, as Litigation Trustee of THE  
MAS LITIGATION TRUST,

Plaintiff,

v.

METROPOLITAN LIFE INSURANCE COMPANY, THE  
NORTHWESTERN MUTUAL LIFE INSURANCE  
COMPANY, CAPITAL D'AMERIQUE CDPQ INC.,  
CAISSE DE DEPOT ET PLACEMENT DU QUEBEC,  
CSFB LP HOLDING, SKOOG FAMILY INVESTMENTS,  
LLC, BANCAMERICA CAPITAL INVESTORS II, L.P.,  
WINDWARD/PARK AB III, L.L.C., WINDWARD  
CAPITAL PARTNERS L.P., WINDWARD CAPITAL,  
ASSOCIATES, L.P., SUEZ CAPITAL PARTNERS II, L.P.,  
INDOSUEZ CAPITAL CO-INVEST PARTNERS, L.P.,  
SCP II ASSOCIATES, CREDIT SUISSE FIRST BOSTON  
(USA), INC., CREDIT SUISSE FIRST BOSTON,  
GOLDMAN SACHS CREDIT PARTNERS L.P., JEFFREY  
A. ANDERSON, JON F. BAKER, JOSE R. GARCIA,  
ROBERT H. BARTON III, H.H. WACASER, PETER S.  
MACDONALD, GARY SWENSON, JOHN F. MAYPOLE,  
THOMAS GRAHAM, DONALD A. MCKAY, HENRY A.  
NICKOL, JEFFREY HODGMAN, A. KIPP KOESTER,  
CRAIG VAN ESS, GURMINDER S. BEDI, THOMAS  
WALKER, JACK SKOOG AND DEAN VANEK,

Defendants.

Case No. 07-CV-3213 (SAS)

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**AFFIDAVIT IN SUPPORT OF PLAINTIFF'S  
MEMORANDUM IN SUPPORT OF ITS MOTION  
TO DISMISS COUNTERCLAIM OF DEFENDANTS  
JACK SKOOG AND SKOOG FAMILY  
INVESTMENTS, LLC**

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BARTLIT BECK HERMAN PALENCHAR & SCOTT LLP  
54 West Hubbard Street, 3rd Floor  
Chicago, Illinois 60610  
Telephone: (312) 494-4400  
Facsimile: (312) 494-4440

HALPERIN BATTAGLIA RAICHT, LLP  
555 Madison Avenue, 9th Floor  
New York, New York 10022  
Telephone: (212) 765-9100  
Facsimile: (212) 765-0964

John D. Byars, being duly sworn, deposes and says:

1. I am a member of the Bar of the State of Illinois, have been admitted *pro hac vice* in the instant action, and am associated with the firm of Bartlit Beck Herman Palenchar & Scott, LLP, attorneys for plaintiff in the above-entitled action and I am familiar with all the facts and circumstances in this action.

2. I make this affidavit in support of plaintiff's motion to dismiss the counterclaim of defendants Jack Skoog and Skoog Family Investments, LLC ("SFI") and to certify compliance with this Court's Individual Rules and Procedures.

3. I certify that I have conferred with counsel for Jack Skoog and SFI concerning plaintiff's motion to dismiss, and that I sent a pre-motion letter on February 14, 2007 to counsel for Jack Skoog and SFI, in accordance with the Individual Rules and Procedures of this Court, prior to filing this motion. In addition, I certify that prior to Jack Skoog and SFI filing their counterclaim, I exchanged correspondence with counsel for Jack Skoog and SFI regarding the merits of their counterclaim and plaintiff's intention to file a motion to dismiss.

3. Exhibit 1 attached hereto is a true and correct copy of the relevant excerpts of the "Fourth Amended Joint Plan of Reorganization Proposed by the Debtors" (Dec. 4, 2006).


4. Exhibit 2 attached hereto is a true and correct copy of the relevant excerpts of the "Notice of (I) Preservation of Certain Causes of Action Pursuant to the Fourth Amended Joint Plan of Reorganization and (II) Extension of Voting Deadline and Objection Deadline for Certain Parties with Respect to the Fourth Amended Joint Plan of Reorganization" which includes a draft of the Litigation Trust Agreement (Nov. 21 2006).

5. Exhibit 3 attached hereto is a true and correct copy of the relevant excerpts of the “Findings of Fact, Conclusions of Law, and Order Confirming the Fourth Amended Joint Plan of Reorganization Proposed by the Debtors” (Dec. 6, 2006).

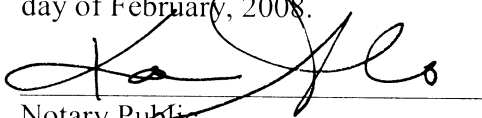
6. Exhibit 4 attached hereto is a true and correct copy of the relevant excerpts of the executed Litigation Trust Agreement (Dec. 29, 2006).

7. Exhibit 5 attached hereto is a true and correct copy of the relevant excerpts of “Skoog Family Investments, LLC’s and Jack Skoog’s Answer and Affirmative Defenses to Complaint” (Aug. 17, 2007).

Dated: February 20, 2008

  
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John D. Byars  
Attorney for Plaintiff  
(admitted *pro hac vice*)

Sworn to before me this 20th  
day of February, 2008.

  
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Notary Public

